

JUDGE PAULEY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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4024

LUKE CORCIONE,

Plaintiff,

-against-

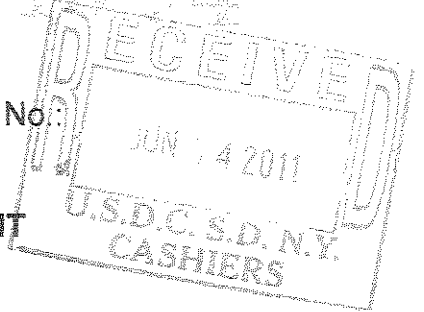
MALEN & ASSOCIATES, P.C.,

Defendant(s).

Civil Action No.:

COMPLAINT

DEMAND FOR JURY TRIAL



Plaintiff LUKE CORCIONE ("Plaintiff"), by and through his attorneys, M. Harvey Rephen & Associates, P.C., as and for its Complaint against the Defendant MALEN & ASSOCIATES, P.C. ("M&A") hereinafter referred to as Defendant(s)", respectfully sets forth, complains and alleges, upon information and belief, the following:

INTRODUCTION/PRELIMINARY STATEMENT

1. Plaintiff brings this action on his own behalf for damages and declaratory and injunctive relief arising from the Defendant's violation(s) of §1692 et seq. of Title 15 of the United States Code, commonly referred to as the Fair Debt Collections Practices Act ("FDCPA").

PARTIES

2. Plaintiff is a resident of the State of New York, residing at 401 Old Briarcliff Rd, Briarcliff, NY 10510.

3. Defendant(s) MALEN & ASSOCIATES, P.C. is a New York law firm with their main office located at 123 Frost Street, Suite 203, Westbury, NY 11590.

4. M & A is a "debt collector" as the phrase is defined and used in the FDCPA under 15 USC §1692a (6).

JURISDICTION AND VENUE

5. The Court has jurisdiction over this matter pursuant to 28 USC §1331, as well as 15 USC §1692 et seq. and 28 U.S.C. §2201. If applicable, the Court also has pendent jurisdiction over the state law claims in this action pursuant to 28 U.S.C. §1367(a).

6. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(2).

FACTUAL ALLEGATIONS

7. Plaintiff repeats, reiterates and incorporates the allegations contained in paragraphs numbered "1" through "6" herein with the same force and effect as if the same were set forth at length herein.

8. On information and belief, Defendant, on behalf of a third-party or itself as purchaser of the debt, began collecting an alleged consumer debt.

9. On information and belief, and better known to the Defendant, the Defendant began its collection efforts and campaign of communicating with the Plaintiff by filing suit against the Plaintiff and then filing a false affidavit stating that Plaintiff was served notice of the suit.

10. The Defendants filed a suit against the Plaintiff on September 17th, 2010. On September 29th, 2010, the Defendant's process server allegedly spoke to the Plaintiff's neighbor, John Smith, whose residence was stated as 403 Old Briarcliff Road, to ascertain the Plaintiff's residence for service of process. Allegedly upon confirming the Plaintiff's address of 401 Old Briarcliff Road, the process server supposedly affixed a copy of the summons and complaint on the Plaintiff's front door.

11. The Defendant failed to properly serve the Plaintiffs. The Plaintiff's alleged neighbor, John Smith, whose residence was stated at 403 Old Briarcliff Road, does not

exist, nor does his address. The Plaintiffs never received notice of the Defendant's lawsuit.

12. The Defendants violated 15 USC §1692 e- preface, using a deceptive, false and misleading representation in connection with the collection of a debt by suing the Plaintiff and then filing a false affidavit that he was served.

13. The Defendants further violated 15 USC §1692 e (11), non-disclosure, and 15 USC §1692 f- preface, using an unfair and unconscionable means in connection with the collection of a debt, by filing a false affidavit and by not giving the plaintiff notice that he was being sued.

FIRST CAUSE OF ACTION
(Violations of the FDCPA)

14. Plaintiff repeats, reiterates and incorporates the allegations contained in paragraphs numbered "1" through "13" herein with the same force and effect as if the same were set forth at length herein.

15. Defendant's debt collection efforts attempted and/or directed towards the Plaintiff violated various provisions of the FDCPA, including but not limited to 15 USC §1692 e- preface, e (11) and 15 USC §1692 f- preface.

16. As a result of Defendant's violations of the FDCPA, the Plaintiff has been damaged and is entitled to damages in accordance with the FDCPA.

DEMAND FOR TRIAL BY JURY

17. Plaintiff LUKE CORCIONE hereby respectfully requests a trial by jury for all claims and issues in its Complaint to which it is or may be entitled to a jury trial.

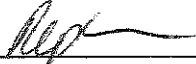
PRAYER FOR RELIEF

WHEREFORE, Plaintiff LUKE CORCIONE demands judgment from the Defendants MALEN & ASSOCIATES, P.C., as follows:

- A. For actual damages provided and pursuant to 15 USC §1692k (a) (1);
- B. For statutory damages provided and pursuant to 15 USC §1692k (2)
- (A);
- C. For statutory damages provided and pursuant to 15 USC §1692k (2)
- (B);
- D. For attorneys' fees and costs provided and pursuant to 15 USC §1692k(a)(3);
- E. A declaration that the Defendant's practices violated the FDCPA;
- F. For any such other and further relief, as well as further costs, expenses and disbursements of this action, as this Court may deem just and proper.

Dated: New York, New York
June 8th, 2011

Respectfully submitted,

By: 
M. Harvey Rephen, (MR3384), Esq.
M. HARVEY REPHEN & ASSOCIATES, P.C.
708 Third Avenue, 6th Floor
New York, New York 10017
Phone: (212) 796-0930
Facsimile: (212) 330-7582

Attorney for the Plaintiff Luke Corcione

To: Malen & Associates, P.C.
123 Frost Street, Suite 203
Westbury, NY 11590

(Via Prescribed Service)

Clerk,
United States District Court, Southern District of New York
(For Filing Purposes)